

FILED

NOV 07 2007

HAROLD S. MARENUS, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. SC-07-1401
)
) Bk. No. 05-14824
MARIZA SUAREZ,)
) Adv. No. 06-90302
)
)
) Debtor.)

MARIZA SUAREZ,
Appellant,

v.

TRACY BARRETT; GERALD H.
DAVIS, Trustee; UNITED STATES
TRUSTEE,
Appellees.

'07CV 2175 BEN BLM

ORDER:
(1) DENYING MOTION FOR
APPOINTMENT OF COUNSEL; AND
(2) TRANSFERRING MOTION TO
PROCEED IN FORMA PAUPERIS TO
DISTRICT COURT.
(Response Required)

Before: MARKELL and KLEIN, Bankruptcy Judges.

This is an appeal from a judgment entered in the above-referenced adversary proceeding.

On October 19, 2007, Appellant filed a motion for appointment of counsel and a motion to proceed in forma pauperis ("IFP Motion"). Both motions were forwarded to the BAP.

1. Motion for Appointment of Counsel.

Under the holding of Perroton v. Gray (In re Perroton), 958 F.2d 889 (9th Cir. 1992), the Bankruptcy Appellate Panel lacks jurisdiction to appoint counsel for Appellant under 28 U.S.C. § 1915(a) because bankruptcy courts are not "court[s] of the United States" as defined in 28 U.S.C. § 451.

1 Furthermore, federal courts do not have the authority "to
2 make coercive appointments of counsel." Mallard v. United States
3 Dist. Ct. for S. Dist of Iowa, 490 U.S. 296, 310 (1989). Nor is
4 there an absolute right to counsel in civil matters. Hedges v.
5 Resolution Trust Corp. (In re Hedges), 32 F.3d 1360, 1363 (9th
6 Cir. 1994).

7 Therefore, Appellant's motion for appointment of counsel is
8 hereby ORDERED DENIED.

9 **2. Motion to Proceed In Forma Pauperis.**

10 Under the holding of Perroton v. Gray (In re Perroton), 958
11 F.2d 889 (9th Cir. 1992) and Determan v. Sandoval (In re
12 Sandoval), 186 B.R. 490, 496 (9th Cir. BAP 1995), the Bankruptcy
13 Appellate Panel has no authority to grant in forma pauperis
14 motions under 28 U.S.C. § 1915(a) because bankruptcy courts are
15 not "court[s] of the United States" as defined in 28 U.S.C.
16 § 451.

17 Therefore, Appellant's IFP Motion is hereby TRANSFERRED to
18 the United States District Court for the Southern District of
19 California, for the limited purpose of ruling on the IFP Motion.

20 It is Appellant's responsibility to take all necessary steps
21 to have the IFP Motion considered by the district court within a
22 reasonable period of time.

23 No later than **Friday, December 7, 2007**, Appellant must file
24 with the BAP and serve on opposing counsel a written response
25 which includes as an exhibit a copy of the district court's order
26 on the IFP Motion or an explanation of the steps Appellant has
27 taken to have the IFP Motion considered by the district court.

28 For the convenience of the district court, copies of the IFP

1 Motion, the notice of appeal and the order on appeal are attached
2 to this order.

— THIS FORM MUST BE KEPT CONFIDENTIAL —

FW-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Mariza Suarez P.O. Box 130054 Carlsbad, California 92013		FOR COURT USE ONLY	
TELEPHONE NO.: (760) 802-1133 FAX NO. (Optional):		<input checked="" type="checkbox"/> FILED <input type="checkbox"/> ENTERED <input type="checkbox"/> LODGED <input type="checkbox"/> RECEIVED OCT 19 2007 CLERK, U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA BY TS DEPUTY	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name): Pro-Per			
NAME OF COURT: United States Bankruptcy Court			
STREET ADDRESS: 325 West "F" Street			
MAILING ADDRESS:			
CITY AND ZIP CODE: San Diego, California 92101-6991			
BRANCH NAME: Southern District of California			
PLAINTIFF/ PETITIONER: Tracy Diane Barrett			
DEFENDANT/ RESPONDENT: Mariza Suarez			
APPLICATION FOR WAIVER OF COURT FEES AND COSTS		CASE NUMBER: 05-14824-PB7 Adv. 06-90302	

I request a court order so that I do not have to pay court fees and costs.

1. a. ☒ I am *not* able to pay any of the court fees and costs.
 b. ☐ I am able to pay *only* the following court fees and costs (specify):

2. My current street or mailing address is (if applicable, include city or town, apartment no., if any, and zip code):

P.O. Box 130054, Carlsbad, California 92013

3. a. My occupation, employer, and employer's address are (specify):

Designer, Stantec Consulting, Inc.

- b. My spouse's occupation, employer, and employer's address are (specify):

N/A

4. ☐ I am receiving financial assistance under one or more of the following programs:

- a. ☐ **SSI and SSP:** Supplemental Security Income and State Supplemental Payments Programs
 b. ☐ **CalWORKs:** California Work Opportunity and Responsibility to Kids Act, implementing TANF, Temporary Assistance for Needy Families (formerly AFDC)
 c. ☐ **Food Stamps:** The Food Stamp Program
 d. ☐ **County Relief, General Relief (G.R.), or General Assistance (G.A.)**

5. If you checked box 4, you must check and complete one of the three boxes below, unless you are a defendant in an unlawful detainer action. Do not check more than one box.

- a. ☐ (Optional) My Medi-Cal number is (specify):

- b. ☐ (Optional) My social security number is (specify):

□□□□ - □□□□ - □□□□□□ and my date of birth is (specify):

[Federal law does not require that you give your social security number. However, if you don't give your social security number, you must check box c and attach documents to verify the benefits checked in item 4.]

- c. ☐ I am attaching documents to verify receipt of the benefits checked in item 4, if requested by the court.
 [See Form FW-001-INFO, Information Sheet on Waiver of Court Fees and Costs, available from the clerk's office, for a list of acceptable documents.]

[If you checked box 4 above, skip items 6 and 7, and sign at the bottom of this side.]

6. ☐ My total gross monthly household income is less than the amount shown on the Information Sheet on Waiver of Court Fees and Costs available from the clerk's office.

[If you checked box 6 above, skip item 7, complete items 8, 9a, 9d, 9f, and 9g on the back of this form, and sign at the bottom of this side.]

7. ☒ My income is not enough to pay for the common necessities of life for me and the people in my family whom I support and also pay court fees and costs. [If you check this box, you must complete the back of this form.]

WARNING: You must immediately tell the court if you become able to pay court fees or costs during this action. You may be ordered to appear in court and answer questions about your ability to pay court fees or costs.

I declare under penalty of perjury under the laws of the State of California that the information on both sides of this form and all attachments are true and correct.

Date: October 19, 2007

Mariza Suarez

(TYPE OR PRINT NAME)

(Financial information on reverse)

(SIGNATURE)

FW-001

PLAINTIFF/PETITIONER: Tracy Diane Barrett	CASE NUMBER:
DEFENDANT/RESPONDENT: Mariza Suarez	05-14824-PB7 Adv. 06-90302

FINANCIAL INFORMATION

8. ☒ My pay changes considerably from month to month. (If you check this box, each of the amounts reported in item 9 should be your average for the past 12 months.)

9. MY MONTHLY INCOME

- a. My gross monthly pay is: \$ 4701.50
- b. My payroll deductions are (specify purpose and amount):
- | | |
|-------------------|------------|
| (1) Taxes | \$ 1354.00 |
| (2) Insurance | \$ 345.00 |
| (3) Child Support | \$ 1220.00 |
| (4) | \$ |
- My TOTAL payroll deduction amount is: \$ 2919.00
- c. My monthly take-home pay is (a. minus b.): \$ 1782.50
- d. Other money I get each month is (specify source and amount; include spousal support, child support, parental support, support from outside the home, scholarships, retirement or pensions, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest or royalty, trust income, annuities, net business income, net rental income, reimbursement of job-related expenses, and net gambling or lottery winnings):
- | | |
|-----|----|
| (1) | \$ |
| (2) | \$ |
| (3) | \$ |
| (4) | \$ |

The TOTAL amount of other money is: \$ 0.00
(If more space is needed, attach page labeled Attachment 9d.)

e. MY TOTAL MONTHLY INCOME IS

(c. plus d.): \$ 1782.50

f. Number of persons living in my home: 3

Below list all the persons living in your home, including your spouse, who depend in whole or in part on you for support, or on whom you depend in whole or in part for support:

Name	Age	Relationship	Gross Monthly Income
(1) Tiffany Suar	13	Daughter	\$ 0.00
(2) Elisa Suarez-	10	Daughter	\$ 0.00
(3)			\$
(4)			\$
(5)			\$

The TOTAL amount of other money is: \$ 0.00

(If more space is needed, attach page labeled Attachment 9f.)

g. MY TOTAL GROSS MONTHLY HOUSEHOLD INCOME IS

(a. plus d. plus f.): \$ 4701.50

10. I own or have an interest in the following property:

- a. Cash \$ 10.00
- b. Checking, savings, and credit union accounts (list banks):
- | | |
|----------|----------|
| (1) PLCU | \$ 20.00 |
| (2) | \$ |
| (3) | \$ |
| (4) | \$ |

10. c. Cars, other vehicles, and boats (list make, year, fair market value (FMV), and loan balance of each):

Property	FMV	Loan Balance
(1) Car	\$ 8500.00	\$ 2800.00
(2)	\$	\$
(3)	\$	\$

- d. Real estate (list address, estimated fair market value (FMV), and loan balance of each property):

Property	FMV	Loan Balance
(1) Vacant land	\$ 700.00	\$ 0.00
(2)	\$	\$
(3)	\$	\$

- e. Other personal property — jewelry, furniture, furs, stocks, bonds, etc. (list separately):

\$ 0.00

11. My monthly expenses not already listed in item 9b above are the following:

- | | |
|--|-----------|
| a. Rent or house payment & maintenance | \$ 800.00 |
| b. Food and household supplies | \$ 250.00 |
| c. Utilities and telephone | \$ 215.00 |
| d. Clothing | \$ 90.00 |
| e. Laundry and cleaning | \$ 50.00 |
| f. Medical and dental payments | \$ 150.00 |
| g. Insurance (life, health, accident, etc.) | \$ |
| h. School, child care | \$ |
| i. Child, spousal support (prior marriage) | \$ |
| j. Transportation and auto expenses (insurance, gas, repair) | \$ 280.00 |
| k. Installment payments (specify purpose and amount): | |
| (1) Car Payment | \$ 233.00 |
| (2) Credit Card | \$ 150.00 |
| (3) | \$ |

The TOTAL amount of monthly installment payments is: \$ 383.00

- l. Amounts deducted due to wage assignments and earnings withholding orders: \$ 1695.00

m. Other expenses (specify):

(1)	\$
(2)	\$
(3)	\$
(4)	\$
(5)	\$

The TOTAL amount of other monthly expenses is: \$

n. MY TOTAL MONTHLY EXPENSES ARE

(add a. through m.): \$ 2218.00

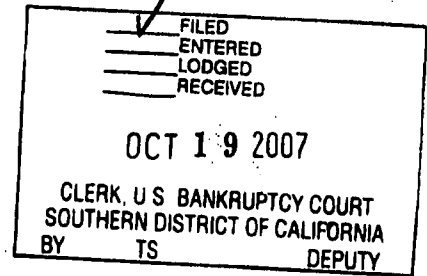
12. Other facts that support this application are (describe unusual medical needs, expenses for recent family emergencies, or other unusual circumstances or expenses to help the court understand your budget; if more space is needed, attach page labeled Attachment 12):

JOAN'S PAID-OFF FROM A JOB AND ON DISABILITY WITHIN LAST 2 YEARS.

WARNING: You must immediately tell the court if you become able to pay court fees or costs during this action. You may be ordered to appear in court and answer questions about your ability to pay court fees or costs.

MARIZA SUAREZ
P.O. BOX 130054
CARLSBAD, CA. 92013
Telephone: (760) 802-1133

DEFENDANT, PRO SE
MARIZA SUAREZ



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In Re:

MARIZA SUAREZ,
Debtor.

Bankruptcy No. 05-14824-B7

Adversary No. 06-90302-B7

NOTICE OF APPEAL

TRACY BARRETT,
Plaintiff,

v.

MARIZA SUAREZ,
Defendant.

NOTICE IS HEREBY GIVEN that, Defendant, MARIZA SUAREZ, appeals under 28 U.S.C. § 158 (a) or (b) from the judgment of nondischargeability pursuant to 11 U.S.C § 523 (a) (6) of the bankruptcy Judge Peter W. Bowie after court trial in this adversary proceeding, which was entered on October 10, 2007.

DATED: OCTOBER 19, 2007

BY: 
APPELLANT, PRO SE, MARIZA SUAREZ

BARRETT v. SUAREZ

1

NOTICE OF APPEAL

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA


In re

Case No. 05-14824-B7

1 11 U.S.C. § 523(a)(6) shall be, and hereby is entered in favor of
2 plaintiff Barrett and against debtor/defendant Suarez.

3 IT IS SO ORDERED.

4 DATED: OCT 10 2007

5 
6 PETER W. BOWIE Chief Judge
7 United States Bankruptcy Court
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re Case No. 05-14824-B7
Adv. No. 06-90302-B7

CERTIFICATE OF MAILING

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

JUDGMENT

was enclosed in a sealed envelope bearing the lawful frank of the Bankruptcy Judges and mailed to each of the parties at their respective address listed below:

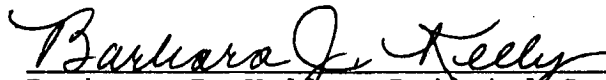
Attorney for Plaintiff:

Pamela Kleinkauf, Esq.
16776 Bernardo Center Drive,
Suite 203
San Diego, CA 92128

Attorney for Defendant:

Bill Parks, Esq.
316 South Melrose Drive,
Suite 100
Vista, CA 92081

Said envelope(s) containing such document were deposited by me in a regular United States mail box in the City of San Diego, in said district on October 10, 2007.


Barbara J. Kelly, Judicial Assistant

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Mariza Suarez

DEFENDANTS

Tracy Barrett; Gerald H. Davis, Trustee
 TO CLERK, U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 DEPUTY

FILED

NOV - 6 2007

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
 (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Mariza Suarez
 P.O. Box 130054
 Carlsbad, CA. 92013
 (760) 802-1133

ATTORNEYS (IF KNOWN)

~~070~~ 2175 BEN BLM

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question
 (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX
 (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PT | DEF | | PT | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 USC 158

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 610 Agriculture	<input checked="" type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment	
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 850 Securities/Commodities Exchange	
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 530 General	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC	
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(a))	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 555 Prisoner Conditions	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations		<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare				<input type="checkbox"/> 950 Constitutionality of State	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights				<input type="checkbox"/> 890 Other Statutory Actions	
<input type="checkbox"/> 290 All Other Real Property						

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE

SIGNATURE OF ATTORNEY OF RECORD